

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1836 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

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ANILBHAI K CHAUDHARY

Versus

STATE OF GUJARAT

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Appearance:

M/S THAKKAR ASSOC. for Petitioner

MS.SIDDHI TALATI ASSISTANT GOVERNMENT PLEADER

for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/11/98

ORAL JUDGEMENT

This writ petition under Article 226 of the Constitution of India has been filed praying for a writ of certiorari for quashing the detention order dated 24.2.1998 and for a writ of habeas corpus for immediate release of the petitioner from illegal detention.

The brief facts are that the District Magistrate, Surat in exercise of powers under section 3(2) of Prevention of Antisocial Activities Act, 1985 (for short 'PASA') passed the impugned order dated 24.2.1998 against the petitioner on the grounds that he was a bootlegger and was involved in several cases registered under the Prohibition Act and his activities were prejudicial to maintenance of public order. The grounds of detention were supplied to the petitioner.

The petitioner has challenged the impugned order on three grounds. One is that the order suffers from the vice of non application of mind. The other is that the activities of the petitioner are not prejudicial to maintenance of public order and the last has been that the representation of the detenu petitioner was neither considered by the Detaining Authority nor it was forwarded by the Detaining Authority to the State Government for consideration and this inaction of the Detaining Authority and the State Government has rendered the detention and continued detention of the petitioner illegal.

Since the last point itself is sufficient for allowing the writ petition it is futile to consider the remaining two attacks against the impugned order.

The Detaining Authority in para 6 of his counter affidavit has admitted that the representation dated 3.3.1998 sent by the detenu through his Advocate was received in his office on 4.3.1998. The order of detention was passed on 24.2.1998. The State Government had approved the order of detention on 7.3.1998. The Detaining Authority further deposes in this para that he is not empowered to consider the representation after the order of detention. This stand of the Detaining Authority is wholly unwarranted, and contrary to law. The learned Assistant Government Pleader however, pointed out that the Detaining Authority in para 6 mentioned that he had no power to consider the representation after the detention order was approved by the State Government. However, nothing can be added or subtracted from the affidavit and the affidavit has to be taken on its face value. It shows that the stand of the Detaining Authority was that he had no power to consider the representation after the detention order had been passed. This is not only contrary to law but also contrary to his disclosure in the grounds of detention wherein he informed the detenu that if he wanted to make submission before the Detaining Authority he could do so at the address of the Detaining Authority given in the grounds

of detention.

Even if the contention of the learned Assistant Government Pleader is accepted that there is omission in the affidavit on this point still the Detaining Authority has not explained why he did not consider the representation between 4.3.1998 to 7.3.1998. He has admitted that the representation was received by his office on 4.3.1998 . Thereafter he was required to deal with the representation expeditiously. The word 'expeditiously' mean that action should have been taken on the representation right on the date when it was received and if some formalities and informations were required to be gathered necessary note could have been put-up in that matter. The order of the State Government was passed confirming the detention order on 7.3.1998. Thus, during these three days the Detaining Authority who had all the material before him could have considered the representation but he did not do so. This inaction on the part of the Detaining Authority itself is sufficient ground for quashing the detention order.

Secondly, the Detaining Authority has not stated that the representation was pending before him and before he could take decision on it he was made aware that the State Government had confirmed the detention order on 7.3.1998. Even if it was so, the Detaining Authority was bound to forward the representation to the State Government making endorsement that he became functus officio after detention order was approved by the State Government.

The counter affidavit of Shri J.R.Rajput, Under Secretary to the State Government discloses in para 2 that so far representation dated 3.3.1998 addressed to the District Magistrate, Surat has not been received in the Home Department. These two actions are highly deplorable. These two actions have rendered the detention and continued detention of the petitioner illegal.

For the reasons stated above the petition succeeds and is hereby allowed. The impugned order of detention dated 24.2.1998 is quashed. The petitioner shall be released from the custody forthwith unless he is wanted in connection with some other criminal case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt